



FEDERAL TRADE COMMISSION

16 CFR Part 437

RIN 3084-AB04

Business Opportunity Rule

AGENCY: Federal Trade Commission.

ACTION: Regulatory review; advance notice of proposed rulemaking; request for public comment.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) is requesting public comment on its “Business Opportunity Rule” (“Rule”), the trade regulation rule governing the sale of certain business opportunities. The Commission is soliciting comments about the efficiency, costs, benefits, and regulatory impact of the Rule, as part of its ten-year regulatory review plan. The Commission is also soliciting comments to inform its consideration of whether the Rule should be extended to include business opportunities and other money-making opportunity programs not currently covered by the Rule, including business coaching and work-from-home programs, investment coaching programs, and e-commerce opportunities. All interested persons are hereby given notice of the opportunity to submit written data, views, and arguments concerning the Rule.

DATES: Written comments must be received on or before [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested parties may file a comment online or on paper by following the Instructions for Submitting Comments part of the **SUPPLEMENTARY**

INFORMATION section below. Write “Business Opportunity Rule ANPR, Project No. R511993” on your comment, and file your comment online through

<https://www.regulations.gov>. If you prefer to file your comment on paper, mail your

comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Christine M. Todaro, (202) 326-3711, ctodaro@ftc.gov, Melissa Dickey, (202) 326-2662, mdickey@ftc.gov, or Andrew Hudson, (202) 326-2213, ahudson@ftc.gov, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Mailstop CC-5201, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission issued the Business Opportunity Rule pursuant to its authority under Sections 5 and 18 of the Federal Trade Commission Act to proscribe unfair or deceptive acts or practices.¹ The Business Opportunity Rule requires business opportunity sellers to furnish prospective purchasers² a disclosure document that provides information regarding the seller, the seller's business, and the nature of the proposed business opportunity, as well as additional information to substantiate any claims about actual or potential sales, income, or profits for a prospective business opportunity purchaser. The seller must also preserve information that forms a reasonable basis for such claims.

The Rule is designed to ensure that prospective purchasers receive information to help them evaluate business opportunities. Sellers must disclose five key items of information in a simple, one-page document: (1) the seller's identifying information; (2) whether the seller makes a claim about the purchaser's likely earnings (and, if yes, the

¹ Business Opportunity Rule Statement of Basis and Purpose, 76 FR 76858 (Dec. 8, 2011). Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce." Section 18 of the FTC Act, 15 U.S.C. 57a, permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of Section 5.

² Prospective business opportunity purchaser" is a broad term; it includes individuals seeking to purchase a business or money-making opportunity but can also include job seekers who encounter marketing for business opportunities.

seller must provide information supporting any such claims); (3) whether the seller, its affiliates, or key personnel have been involved in certain legal actions (and, if yes, the seller must provide a separate list of those actions); (4) whether the seller has a cancellation or refund policy (and, if yes, the seller must provide a separate document stating the material terms of such policies); and (5) a list of persons who have purchased the business opportunity within the previous three years. Misrepresentations and omissions are prohibited under the Rule, and, for sales conducted in languages other than English, all disclosures must be provided in the language in which the sale is conducted.

Under the Rule, a “business opportunity” means a “commercial arrangement” in which a “seller solicits a prospective purchaser to enter into a new business”; the “prospective purchaser makes a required payment”; and the “seller, expressly or by implication, orally or in writing, represents that the seller or one or more designated persons will” either (1) provide locations for the purchaser’s equipment, such as a vending machine; (2) provide outlets, accounts, or customers for the purchaser’s goods or services; or (3) buy back any or all of the goods or services that the purchaser makes or provides.³

The Business Opportunity Rule arose out of the Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures Rule (“Original Rule”), which addressed deceptive and unfair practices in the sale of franchises and business opportunity ventures.⁴ In March 2007, the FTC bifurcated the Original Rule into a Franchise Rule and Interim Business Opportunity Rule in order to require different kinds of pre-sale disclosures and related regulatory provisions.⁵ The Interim Business Opportunity Rule was similar in substance to the Original Rule. On March 1, 2012, the

³ 16 CFR 437.1(c).

⁴ Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures Rule Statement of Basis and Purpose, 43 FR 59614 (Dec. 21, 1978).

⁵ Disclosure Requirements and Prohibitions Concerning Franchising & Disclosure Requirements and Prohibitions Concerning Business Opportunities, 72 FR 15444 (Mar. 30, 2007).

Commission's Revised Business Opportunity Rule took effect and, among other things, expanded the types of covered business opportunities and simplified and streamlined the disclosures provided to prospective business opportunity purchasers.⁶

Since the Rule took effect, the Commission has continued to vigorously challenge misleading earnings claims. For example, the FTC has brought cases under section 5 of the FTC Act, 15 U.S.C. 45, against business coaching and work-from-home programs, investment coaching programs, and e-commerce opportunities.⁷ Despite the aggressive enforcement program at the Commission, deceptive earnings claims continue to proliferate in the marketplace, and many of them are not covered by the Rule. Among other things, this advance notice of proposed rulemaking (ANPR) solicits input on whether the Rule should be expanded.

II. Regulatory Review of the Business Opportunity Rule

The Commission reviews its rules and guides periodically to seek information about their costs and benefits, regulatory and economic impact, and general effectiveness in protecting consumers and helping industry to avoid deceptive or unfair practices. These reviews assist the Commission in identifying rules and guides that may warrant modification or rescission.

With this advance notice of proposed rulemaking, the Commission initiates such a review. The Commission solicits comments on, among other things: (1) the economic impact of, and the continuing need for, the Rule; (2) the Rule's benefits to consumers; (3) and the burden it places on industry members subject to the requirements, in particular small businesses.

III. Issues for Comment

To aid commenters in submitting information, the Commission has prepared the

⁶ Business Opportunity Rule Statement of Basis and Purpose, 76 FR 76817 (Dec. 8, 2011).

⁷ See Advance Notice of Proposed Rulemaking Concerning Deceptive or Unfair Earnings Claims, 87 FR 13951, 13952 n.16.

following questions related to the Business Opportunity Rule. The Commission seeks comments on these and any other issues related to the Rule's current requirements. The Commission will also consider any comments previously submitted in response to the Advance Notice of Proposed Rulemaking Concerning Deceptive or Unfair Earnings Claims⁸ that are relevant to these questions or any other issues related to the Business Opportunity Rule's current requirements. The Commission requests that responses to its questions be as specific as possible. Commenters should provide any available evidence, including empirical analyses, that supports their position. Where comments advocate a change to the Rule, please be specific in stating the unfair or deceptive act or practice to which the change relates, provide evidence of the pervasiveness of the act or practice, and describe the suggested change and any potential costs or benefits the change might create for prospective purchasers and business opportunity sellers.

A. General Regulatory Review Questions

1. *Need:* Is there a continuing need for the Rule? Why or why not?
2. *Benefits and Costs to Consumers:* What benefits has the Rule provided to consumers, and does the Rule impose any significant costs on consumers? Please quantify these benefits and costs wherever possible.
3. *Benefits and Costs to Industry Members:* What benefits has the Rule provided to businesses, and does the Rule impose any significant costs, including costs of compliance, on businesses and in particular small businesses? Please quantify these benefits and costs wherever possible.
4. *Impact on Information:* What impact has the Rule had on the flow of

⁸ *Id.* (comment period closed May 10, 2022). In that matter, No. R111003, the Commission solicited and received comments about the following industries: multilevel marketers, for-profit schools, and gig platforms. The Commission will consider whether to propose one or more rules addressing the topics raised in those comments as part of that rulemaking, where it may also address other topics raised in that advance notice of proposed rulemaking relating to deceptive or unfair earnings claims.

truthful information to consumers and on the flow of misleading information to consumers?

5. *Compliance*: Provide any evidence concerning the degree of industry compliance with the Rule. Does this evidence indicate that the Rule should be modified? If so, why and how? If not, why not?
6. *Possible Recommended Changes*: What modifications, if any, should the Commission make to the Rule to increase its benefits or reduce its costs? How would these modifications affect the costs and benefits of the Rule for consumers? How would these modifications affect the costs and benefits of the Rule for businesses, and in particular small businesses?
7. *Unnecessary Provisions*: Provide any evidence, including empirical analyses, concerning whether any of the Rule's provisions are no longer necessary. Explain why these provisions are unnecessary.
8. *Additional Unfair or Deceptive Practices*: What potentially unfair or deceptive practices, related to business opportunities and not covered by the current Rule, are occurring in the marketplace? Are any such practices prevalent in the market? If so, please describe such practices, including their impact on consumers. Provide any evidence, such as empirical data, consumer perception studies, or consumer reports, that demonstrates the extent of such practices. Provide any evidence that demonstrates whether such practices cause consumer injury, and quantify or estimate that injury if possible. With reference to such practices, should the Rule be modified? If so, why and how? If not, why not?
9. *Rule Coverage*: Should the Commission broaden the Rule to include

business or money-making opportunities not currently covered?

Provide any evidence that supports your position. What potentially unfair or deceptive practices related to business or money-making opportunities not covered by the Rule are occurring in the marketplace? Are any such practices prevalent in the market? If so, please describe such practices, including their impact on consumers. Provide any evidence, such as empirical data, consumer perception studies, or consumer reports, that demonstrates the extent of such practices. Provide any evidence that demonstrates whether such practices cause consumer injury, and quantify or estimate that injury if possible.

10. *Technological or Economic Changes*: What modifications, if any, should be made to the Rule to account for current or impending changes in technology or economic conditions? How would these modifications affect the costs and benefits of the Rule for consumers and businesses, and in particular small businesses?
11. *Conflicts with Other Requirements*: Does the Rule overlap or conflict with other federal, state, or local laws or regulations? If so, how? Provide any evidence that supports your position. With reference to the asserted conflicts, should the Rule be modified? If so, why and how? If not, why not? Are there any Rule changes necessary to help state law enforcement agencies combat unfair or deceptive practices in the business opportunity market?
12. *Other State or Local Laws or Regulations*: Are there state or local laws or regulations that lessen competition or impede consumer protection in the business opportunity market? Provide any evidence

that supports your position. Should the Commission, through its advocacy work, encourage changes to these state or local laws or regulations? If so, what changes?

B. *Specific Questions Related to the Business Opportunity Rule*

13. Should the Rule be expanded to more broadly include coaching or mentoring programs,⁹ work-from-home opportunities,¹⁰ e-commerce opportunities,¹¹ other investment opportunities,¹² or other types of business or money-making opportunities not currently covered by the Business Opportunity Rule?¹³ Why or why not?

- a. What evidence supports such a modification?
- b. How would this modification affect the costs the Rule imposes on businesses and, in particular, small businesses?
- c. How would this modification benefit consumers?

14. If the Rule is modified, should the Rule's disclosure requirements be applied to any of the types of money-making opportunities or business opportunities described in question 13, above? Why or why not?

- a. What evidence supports such a modification?

⁹ See, e.g., *FTC v. OTA Franchise Corp.*, No. 8:20-cv-287 (C.D. Cal. filed 2020); *FTC v. Ragingbull.com, LLC*, No. 1:20-cv-3538 (D. Md. filed 2020); *FTC v. Zurixx LLC*, No. 2:19-cv-713 (D. Utah filed 2019); *FTC v. Nudge LLC*, No. 2:19-cv-867 (D. Utah filed 2019); *FTC v. Mobe Ltd.*, No. 6:18-cv-862 (M.D. Fla. filed 2018); *FTC v. Digit. Altitude*, No. 2:18-cv-0729 (C.D. Cal. filed 2018).

¹⁰ See, e.g., *FTC v. Moda Latina BZ Inc.*, No. 2:20-cv-10832 (C.D. Cal. filed 2020); *FTC v. 8 Figure Dream Lifestyle LLC*, No. 8:19-cv-1165 (C.D. Cal. filed 2019).

¹¹ See, e.g., *FTC v. Nat'l Web Design, LLC*, No. 2:20-cv-846 (D. Utah filed 2020); *FTC v. Advert. Strategies, LLC*, No. 2:16-cv-3353 (D. Ariz. filed 2016).

¹² See, e.g., *FTC v. Warrior Trading*, No. 3:22-cv-30048 (D. Mass. filed 2022); *SEC v. Senderov*, No. 19-cv-5242 (E.D. Wa. filed 2019); *SEC v. Peterson*, No. 19-cv-8334 (C.D. Cal. filed 2019); *In re Spectrum Concepts LLC*, SEC No. 3-16358 (SEC filed 2015); *In re Pankaj Kumar Srivastava*, SEC No. 3-1267 (SEC filed 2014); *SEC v. Butts*, No. 13-23115 (S.D. Fla. filed 2013); *SEC v. Shavers*, No. 4:13-cv-416 (E.D. Tex. filed 2013).

¹³ See, e.g., *FTC v. Position Gurus, LLC*, No. 2:20-cv-710 (filed W.D. Wash. 2020) (marketing and other business-related services); *FTC v. Montano*, No. 6:17-cv-2203 (filed M.D. Fla. 2017) ("automatic money systems" and "secret codes"); *FTC v. World Patent Mktg.*, No. 17-cv-20848 (filed S.D. Fla. 2017) (invention promotion); *FTC v. Blue Saguaro Marketing, LLC*, No. 2:16-cv-3406 (D. Ariz. filed 2016) (grant scheme).

- b. How would this modification affect the costs the Rule imposes on businesses and, in particular, small businesses?
- c. How would this modification benefit consumers?

15. Do any practices of business opportunities or money-making opportunities, either currently covered or identified in question 13 above, disproportionately target or affect certain communities or groups, including but not limited to people living in lower-income communities, communities of color, or other historically underserved communities? If so, why and how? Provide all evidence that supports your answer.
16. Should any of the Rule's provisions be amended to avoid disproportionately affecting certain groups, including but not limited to people living in lower-income communities, communities of color, or other historically underserved communities? If so, why and how? If not, why not?
17. Should any of the Rule's definitions be modified in any way? If so, how? Provide any evidence that supports your position.
18. Should Rule § 437.2, which requires sellers of a business opportunity to furnish prospective purchasers with a disclosure document at least seven calendar days before the earlier of the time that the prospective purchaser (a) signs any contract in connection with the business opportunity sale or (b) makes a payment or provides other consideration to the seller, directly or indirectly through a third party, be modified in any way? If so, how? What are the benefits to consumers and costs to businesses, and in particular small businesses, from the current section or your proposed modification? Provide all

evidence that supports your answer, including any evidence that quantifies the benefits to consumers and the costs to businesses, and in particular small businesses.

19. Should Rule § 437.3, which outlines the information that must be included in the disclosure document and requires sellers to update their disclosures periodically, be modified in any way? If so, how? What are the benefits to consumers and costs to businesses, and in particular small businesses, from the current section or your proposed modification? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers and the costs to businesses, and in particular small businesses.
20. Should Rule § 437.4, which governs earnings claims by sellers of business opportunities, be modified in any way? If so, how? What are the benefits to consumers and costs to businesses, and in particular small businesses, from the current section or your proposed modification? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers, and the costs to businesses, and in particular small businesses.
21. Should Rule § 437.5, which speaks to sales conducted in languages other than English, be modified in any way? If so, how? What are the benefits to consumers and costs to businesses, and in particular small businesses, from the current section or your proposed modification? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers and the costs to businesses, and in particular small businesses.
22. Should Rule § 437.6, which prohibits sellers from engaging in a

number of deceptive practices that are common in the sale of fraudulent business opportunities, be modified in any way? If so, how? What are the benefits to consumers and costs to businesses, and in particular small businesses, from the current section or your proposed modification or your proposed modification? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers and the costs to businesses, and in particular small businesses.

23. Should Rule § 437.7, which contains the Rule's record retention requirements, be modified in any way? If so, how? What are the benefits to consumers and costs to businesses, and in particular small businesses, from the current section or your proposed modification? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers and the costs to businesses, and in particular small businesses.

24. Should Rule § 437.8, the franchise exemption, be modified in any way? If so, how? What are the benefits to consumers and costs to businesses, and in particular small businesses from the current section or your proposed modification? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers and the costs to businesses, and in particular small businesses.

25. Should Rule § 437.9, which discusses how the Rule interacts with state law and the effect of the Rule on existing Commission orders, be modified in any way? If so, how? What are the benefits to consumers and costs to businesses, and in particular small businesses, from the

current section or your proposed modification? Provide all evidence that supports your answer, including any evidence that quantifies the benefits to consumers and the costs to businesses, and in particular small businesses.

IV. Instructions for Submitting Comments

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write “Business Opportunity Rule ANPR, Project No. R511993,” on your comment. Your comment, including your name and your state, will be placed on the public record of this proceeding, including, to the extent practicable, on <https://www.regulations.gov>.

Because of public health measures and the agency’s heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through <https://www.regulations.gov>. To ensure the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write “Business Opportunity Rule ANPR, Project No. R511993” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website, <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information such as your or anyone’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or

credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential”—as provided in section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule § 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule § 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule § 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at <https://www.regulations.gov>—as legally required by FTC Rule § 4.9(b)—we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule § 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this request for comment and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site->

information/privacy-policy.

By direction of the Commission.

April J. Tabor,

Secretary.

Note: The following statement will not appear in the Code of Federal Regulations.

Statement of Chair Lina M. Khan

The Business Opportunity Rule protects Americans from false promises of easy riches. A business opportunity may be pitched as a way for a buyer to immediately get a business up and running. The point of the rule is to make sure people know what they're getting into, with a realistic sense of how much they're likely to earn. It requires sellers to honestly disclose key information up front.

The rule has served the public well over the years.¹ But it's written in a way that doesn't necessarily capture some business models and practices that have become more widespread in the decade since it was last amended. That's why I'm glad to see that the Commission is seeking public comment on whether to modify the Business Opportunity Rule. This is the first review since the Commission approved amendments to the rule in December 2011. A lot has changed since then.

The ANPR notes several varieties of scams that may fall outside the scope of the existing rule. These include certain kinds of business coaching and work-from-home programs, investment programs, and e-commerce opportunities. A classic example is someone selling an online course that purports to teach you how to make big profits trading stocks or cryptocurrency in your home—risk-free. These scams may not meet the precise definition of a business opportunity under the letter of the rule. But they can violate its spirit by luring consumers with false promises of easy money.

¹ See, e.g. Press Release, Fed. Trade Comm'n, Operators of Business Opportunity Scheme That Falsely Promised Big Earnings Will be Banned From Offering Any Business or Investment Services, Under FTC Settlement (July 2, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/07/operators-business-opportunity-scheme-falsely-promised-big-earnings-will-be-banned-offering-any>.

Sometimes, the Commission can use other authorities to crack down on these types of scams. But case-by-case enforcement has key limitations—especially after the Supreme Court’s *AMG* decision, which took off the table one of the Commission’s most effective ways of getting money back to consumers harmed by businesses that cheat or deceive them.² Now, it’s difficult for the FTC to seek refunds for defrauded consumers unless the deception violates an existing rule. That’s one additional reason why it may be especially necessary to update the Business Opportunity Rule. Keeping rules up-to-date and relevant is a crucial tool in our effort to protect consumers and honest businesses alike.

I am grateful to the FTC staff for their hard work on this matter and will look forward to reviewing public comments as we determine next steps.

[FR Doc. 2022-25587 Filed: 11/23/2022 8:45 am; Publication Date: 11/25/2022]

² *AMG Capital Mgmt., LLC. v. FTC*, 141 S. Ct. 1341 (2021).